IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6114 OF 1995

Sarjerao Mahadeo Kolekar & Ors. .. Petitioners.
Vs.
Tahsildar, Hatkanangale & Ors. .. Respondents.

Shri C.G.Gavnekar for the petitioner
Shri V.S.Gokhale AGP for respondent nos.1 to 3.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE, JJ.
DATED : MARCH 09, 2006.

P.C:

. The petitioners, by means of this writ petition under Article 226 of the Constitution of India, have prayed for the declaration that the respondents were not entitled to pass the order, under section 34(1) of the Maharashtra Land Revenue Code (for short "the Code") and assume the land, bearing Gat No.925/6, Village Hupari, Tal.Hatkanangale, Dist. Kolhapur (for short "the land in question"). The petitioners have also prayed for directions to respondent nos.1 and 2 not to give effect to the said order purportedly passed under section 34(1) of the Code.

2. The petitioners claim that the property in question alongwith some other properties was of one Indumati Ranisaheb Maharaj of Kolhapur, princely

State. They were gifted to her by the then Chatrapati Shahu Maharaj in the year 1922 by executing a deed of writing dated 25.5.1992. Since the deed is not a part of the record, in instant proceedings, the terms of the deed are not clear. However, the petitioners have set out in the petition that these properties were given to Indumati Ranisaheb Maharaj for her maintenance and that she was not to part with the said properties during her lifetime. It is further contended that under the said deed after her death the said properties would revert back to Karvir Sansthan.

3. According to the petitioners, Indumati Ranisaheb during her lifetime inducted them and some others of Dhangar community in the property in question as tenants. Their names were also entered in the record of rights. Indumati Ranisaheb expired on 30.11.1971. Since she died without leaving anyone as her heir and legal representative the properties were acquired by the Government under section 34(1) of the Code. As a result thereof the vahivat of the petitioners was terminated and the possession, according to the respondents, was taken over on 2nd April, 1981. The petitioners' claim that though the Government claim that they took possession of the land in

question, it was a symbolic possession and in fact they continued to be in possession as tenants and, therefore, their rights as tenants remained intact. It appears that the civil suit being Regular Civil Suit No.190/1991 was also filed seeking protection of their possession. However, it is not clear whether or not the suit is disposed of. Exhibit-5 application filed by the petitioners in the said suit, however, came to be dismissed vide order dated 21.12.1991. It is mentioned in the petition that one of the plaintiff in the said suit, namely, B.A.Bhanose carried the order passed below Exhibit-5 dated 21.12.1991 in appeal being Miscellaneous Civil Appeal No.8 of 1992 and the same was pending on the date of filing of this petition and that the order of status quo was also passed with regard to the properties other than Gat No.926/6. Since the petitioners are concerned with Gat No.925/6, the pendency of miscellaneous appeal would not matter and hence they filed instant writ petition seeking aforestated reliefs.

4. This Court while issuing Rule on 8th January, 1996 granted ad-interim relief in terms of prayer clause (d) by which respondent nos.1 and 2 were directed not to dispossess the petitioners from area of 5 Hectares and 30 Ares of Gat No.925/6

in their possession and in possession of some other persons mentioned at Exhibit-E. Mr.Gavnekar, learned counsel for the petitionr, after arguing this matter for sometime fairly stated that the petitioners would like to approach the Collector as provided for in sub-section (2) of section 34 of the Code and/or to the tenancy authorities under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "B.T.& A.L. Act"), since the questions raised in the instant writ petition cannot be decided in view of the disputed questions of fact. Mr.Gokhale, learned A.G.P did not and could not object to the request of Mr.Gavnekar, learned counsel for the petitioners. Keeping that in view and considering the overall facts and circumstances of the case we are satisfied that the following order shall meet the ends of justice:

(a) It is open for the petitioners to approach the Collector under sub-section (2) of section 34 or any other provision of the Code making appropriate application to protect their possession in the land in dispute and for such other reliefs as may be advised. It shall also be open for the petitioners to approach the tenancy authorities under B.T.& A.L. Act seeking appropriate reliefs,

if so advised.

(b) While granting such liberty we shall not be understood to have expressed any opinion on the questions raised by the petitioners. If any such application/representation is made by the petitioners same may be considered by the concerned authority on merits in accordance with law.

(c) The interim relief granted by this Court vide order dated 8th January, 1996 shall remain operative for a period of six weeks from today with liberty to the petitioners to apply for appropriate interim reliefs in the proceedings that will be filed by them in pursuance of this order.

(d) Rule, accordingly, stands disposed of in the aforestated terms. No costs.

(D.B.BHOSALE, J.) **(B.H.MARLAPALLE, J.)**